



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

JRE  
Docket No: 6141-98  
20 December 1999



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Marine Corps Judge Advocate Division dated 27 July 1999, a copy of which is attached, and your rebuttal thereto.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. In addition, it noted that although you may have been traumatized by a sexual assault in the 1964-66 period, there is no indication in the available records that you suffered from post traumatic stress disorder prior to your release from active duty in 1966, or that you were unfit to perform the duties of your rank because of physical disability. The fact that the Department of Veterans Affairs (VA) granted you service connection for that condition more than twenty-five years later is not probative of error or injustice. In this regard, the Board noted that the VA may award service connection at any time during a veteran's life time for conditions thought to be related to a period of military service, without regard to the issue of fitness for military duty. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new

and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070

JAM4

27 JUL 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF FORMER [REDACTED]  
[REDACTED] U.S. MARINE CORPS

1. We are asked to provide an opinion regarding Petitioner's request that all disciplinary action (a special court-martial and two nonjudicial punishments (NJPs)) taken against him during his enlistment be set aside and removed from his official military records.

2. We recommend that relief be denied. Our analysis follows.

3. The filing deadline for a BCNR petition is 3 years from the date of the alleged injustice. While BCNR may waive the deadline, Petitioner offers inadequate justification for his delay in excess of 30 years. Therefore, BCNR may deny this petition as untimely.

4. Background

a. Petitioner states he was the victim of a sexual assault at the hands of a fellow Marine and that the resulting emotional trauma somehow caused him to commit the subsequent misconduct for which he was punished. Petitioner received NJP on March 18, 1965, for failure to go to his appointed place of duty, and on November 2, 1965, for damage to Government property. Petitioner also pled guilty at a special court-martial on March 11, 1966, to damaging and wrongfully appropriating Government property.

b. Petitioner argues that, despite his reporting of the sexual assault to the proper law enforcement and medical authorities, he did not receive proper treatment for the stress, depression, and bizarre behavior that he says were caused by the incident. Therefore, according to Petitioner, he should not be held responsible for his subsequent misconduct.

5. Analysis. Based upon my review of the limited records provided, Petitioner has failed to provide sufficient evidence to justify any corrective action. Furthermore, the punishment Petitioner received in all cases was well within legal limits.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF FORMER [REDACTED]  
[REDACTED] U.S. MARINE CORPS

6. Conclusion. Because the Petitioner has failed to demonstrate any error or injustice, I recommend that relief be denied.

*M. W. Fisher, Jr.*

M. W. FISHER, JR.  
Head, Military Law Branch  
Judge Advocate Division